

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF MISSISSIPPI
NORTHERN DIVISION

LANCE DOUGLAS ROARK

PETITIONER

V.

CIVIL ACTION NO. 3:24-CV-572-KHJ-MTP

UNITED STATES OF AMERICA

RESPONDENT

ORDER

Before the Court is pro se Petitioner Lance Douglas Roark's [4] Motion to Appeal, which the Court construes as a motion to review Magistrate Judge Michael T. Parker's [3] Order. The Court denies the [4] Motion.

On September 23, 2024, Roark filed a [1] Petition for Writ of Habeas Corpus under 28 U.S.C. § 2241. The next day, the Magistrate Judge ordered Roark either to pay the \$5 filing fee or amend his application to proceed *in forma pauperis* by October 24. [3] at 1. Roark seeks relief from that [3] Order.

A district judge "may reconsider any [non-dispositive] pretrial matter" decided by a magistrate judge if "it has been shown that the magistrate judge's order is clearly erroneous or contrary to law." 28 U.S.C. § 636(b)(1)(A). Roark argues that requiring him either to pay the filing fee or apply for leave to proceed *in forma pauperis* with a financial affidavit violates his First and Fifth Amendment rights. *See* [4]. He cites only one case, which does not address filing fees or the *in forma pauperis* affidavit requirement. *See id.* (citing *In re Dan Farr Prods.*, 874 F.3d 590, 596 (9th Cir. 2017) (per curiam)).

Congress has provided that the “clerk of each district court *shall* require the parties instituting any civil action . . . in such court . . . to pay a filing fee.” 28 U.S.C. § 1914(a) (emphasis added). “[O]n application for a writ of habeas corpus the filing fee shall be \$5.” *Id.* A court may waive the filing fee for a habeas petitioner who “submits an affidavit that includes a statement of all assets such prisoner possesses that the person is unable to pay such fees or give security therefor.” *Id.* § 1915(a)(1).

Roark filed his [1] Petition without a filing fee or financial affidavit. So the Magistrate Judge was correct to order that Roark either pay the filing fee or amend his *in forma pauperis* application to include a financial affidavit. Roark fails to show that the [3] Order is clearly erroneous or contrary to law.

For the reasons stated, the Court DENIES Roark’s [4] Motion to Appeal. The Court affirms the Magistrate Judge’s [3] Order. **No later than 14 days from the entry of this Order**, Roark shall either (1) pay the \$5 filing fee or (2) amend his application to proceed *in forma pauperis*. Failure to timely comply with any Order of the Court may result in the dismissal of this case. The Clerk of Court shall mail a copy of this Order to Roark at his address of record.

SO ORDERED, this 22nd day of November, 2024.

s/ Kristi H. Johnson
UNITED STATES DISTRICT JUDGE